

2004

Robert W. Dunlap and Kathy L. Dunlap; United  
Park City Mines Co. v. Stitching Mayflower  
Mountain Fonds, a Netherlands association;  
Mayflower Recreational Fonds, a Netherlands  
Association; Consolidated Mayflower Mines, Inc.,  
Cooperative Centrale Raiffeisen Boerenleenbank,  
B.A.; Newpark Mining Co., Lon Investments;  
Murray First Thrift & Loan Co. : Affidavit of D.  
Robert Theobald

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_ca2](https://digitalcommons.law.byu.edu/byu_ca2)



Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

E. Craig Smay; Attorney for Defendants and Appellees.

Clark Waddoups; Robert B. Lochhead; Parr Waddoups Brown Gee & Loveless; Attorneys for Plaintiffs and Appellants.

---

### Recommended Citation

Legal Brief, *Dunlap v. Stitching Mayflower Mountain Fonds*, No. 20040433 (Utah Court of Appeals, 2004).  
[https://digitalcommons.law.byu.edu/byu\\_ca2/5007](https://digitalcommons.law.byu.edu/byu_ca2/5007)

This Legal Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at [http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

FILED  
UTAH APPELLATE COURTS  
JAN 27 2005

E. Craig Smay #2985  
174 East South Temple  
Salt Lake City, Utah 84111  
Telephone Number (801) 539-8515  
Fax Number (801) 539-8544

*Attorney for Appellees Mayflower*

---

IN THE UTAH COURT OF APPEALS

---

ROBERT W. DUNLAP and KATHY L.  
DUNLAP, individuals;  
UNITED PARK CITY MINES CO., A  
DELAWARE CORPORATION,

**Appellants,**

vs.

STICHTING MAYFLOWER  
MOUNTAIN FONDS, a Netherlands  
association; MAYFLOWER  
RECREATIONAL FONDS, a  
Netherlands Association;  
CONSOLIDATED MAYFLOWER  
MINES, INC., a Utah corporation;  
COOPERATIVE CENTRALE  
RAIFFEISEN BOERENLEENBANK,  
B.A., a Netherlands corporation;  
NEWARK MINING CO., a dissolved  
Utah Corporation; LON  
INVESTMENTS, a dissolved Utah  
Corp.; MURRAY FIRST THRIFT &  
LOAN CO., a Utah Corporation.

**Appellees.**

**AFFIDAVIT OF D. ROBERT  
THEOBALD**

Appeal Number: 20040433-CA

Case Number: 000600204

Judge: Honorable Robert K. Hilder

UTAH COURT OF APPEALS  
BRIEF  
UTAH  
DOCUMENT  
KFU  
50  
.A10  
DOCKET NO. 20040433-CA

D. Robert Theobald, being first duly sworn upon oath, deposes and says:

1. I am a licensed real estate dealer in Utah, working in Park City, Utah; in that capacity, I have provided consulting services to Stichting Mayflower Mountain Fonds and Stichting Mayflower Recreational Fonds (“Mayflower”) regarding their land part of a large 1999 annexation to Park City commonly called the “Flagstaff Annexation”.
2. The Marsac Lode, Lot No. 61, lies within the Flagstaff Annexation, and within one of two areas of the annexation where development will be permitted by Park City.
3. The two development areas of the annexation have vehicular access from Park City only over State Road 224 (sometimes “Marsac Avenue”, sometimes “Guardsmans’ Pass Road”) (“SR224”). The bulk of these development areas, and excepting intervening Mayflower ownership, belong to United Park City Mines, Co. (“UPCM”).
4. In 2000, UPCM, joined by Robert W. and Kathy L. Dunlap (“Dunlaps”), sued Mayflower for title to the Marsac Lode. UPCM alleged a contract to purchase the Marsac Lode from the Dunlaps.
5. That litigation resulted, in August 2003, in a ruling of the Utah Court

of Appeals in favor of Mayflower. UPCM and Dunlaps then filed a Petition for Certiorari, which was denied by the Utah Supreme Court on December 18, 2003.

6. Following the appeal, and while the petition for certiorari was pending, UPCM continued to seek approvals from Park City for development in the Flagstaff Annexation. Plans for the development showed relocation of SR224 through the Marsac Lode, with development built in the old roadbed.
7. Mayflower protested such development plans to the Park City authorities, pointing out that they owned the Marsac Lode, which they wished to develop in their own right and that they did not consent to its use for access solely to UPCM's development. In response to such protests, representatives of UPCM, in my presence, frequently informed Park City that ownership of the Marsac Lode had not been resolved in favor of Mayflower and was subject to further proceedings which should resolve it in favor of UPCM.
8. It was then revealed that UPCM had already relocated SR224 onto the Marsac Lode and December 13, 2003, the week prior to denial of their Petition for Certiorari, had dedicated the new road to the Utah Department of Transportation ("UDOT"). UDOT subsequently

advised that they had not been informed that UPCM had no title in the Marsac Lode to dedicate and that the matter required further resolution. See letters of September 21<sup>st</sup> and 22<sup>nd</sup>, 2004, Exhibit “A” hereto.

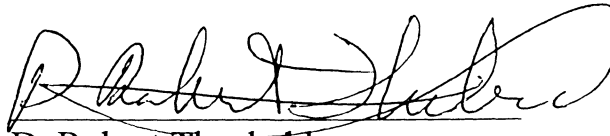
9. When advised by Mayflower and UDOT of the facts regarding the new road, the Park City authorities continued to issue approvals for development to UPCM. Park City took the position that it would regard the dedication of the new road as valid and binding unless UDOT took steps to withdraw it. **Attached hereto as Exhibit “B” is a Park City planning staff memo dated July 14, 2004**, reciting the position regarding SR224. See p. 4, Exhibit “B”.
10. In fact, UDOT could not then surrender the new road without terminating an important public thoroughfare, because UPCM had obliterated the old road and commenced construction on it of development approved by Park City. Mayflower then agreed with UDOT to allow the road in trespass on their property to remain open pending further proceedings, to avoid loss of public access.
11. Eventually, Park City decided that at least some of its approval for development in the Flagstaff Annexation should be made “conditional” upon finally securing access. See Exhibit “C” hereto,

**Park City Planning Staff Report dated October 27, 2004 at p.6**  
(Finding No. 12) pp. 9-10 (Condition No. 10). Park City, however, did not cease issuing approvals, or as far as I am aware, take any steps to inform the buying public that access to the permitted subdivision was provisional. The subdivisions which may ultimately lose access are currently being actively offered for sale by UPCM.

12. At a recent meeting with UDOT, in my presence and the presence of representatives of Park City, representatives of UPCM advised representatives of UDOT that they may condemn as much of the Marsac Lode as is necessary for the new road to cure the failure of a legal dedication, and may obtain the property as cheap, non-development land.

FURTHER AFFIANT SAYETH NOT.

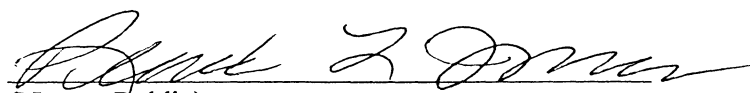
Dated this 18 day of January, 2005.

  
D. Robert Theobald

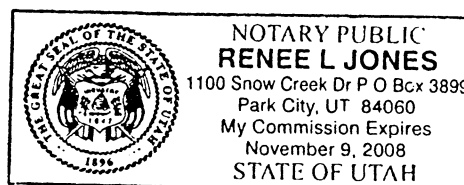
State of Utah )

County of Summit )

Signed and sworn to (or affirmed) before me on this 18 day of January  
2005, by Dean Robert Theobald  
(Name of person making the statement.)

  
(Notary Public)

My commission expires: 11-09-08



## **Exhibit “A”**





State of Utah

## DEPARTMENT OF TRANSPORTATION

JOHN R. NJORD, P.E.  
*Executive Director*CARLOS M. BRACERAS, P.E.  
*Deputy Director*OLENE S. WALKER  
*Governor*GAYLE McKEACHNIE  
*Lieutenant Governor*

September 21, 2004

Mark D Harrington  
Park City Municipal Corporation  
445 Marsac Avenue  
Park City, Utah 84060  
FAXED TO 435.615.4916


Craig Smay  
174 E S Temple  
Salt Lake City, Utah 84111-1102  
FAXED TO 801.539.8544

David Smith  
Talisker Corporation  
PO Box 4349  
Park City, Utah 84060  
FAXED TO 435.615.1239

Subject: SR 224

Dear Messrs:

Randy Park, UDOT's Region Two Director, has asked for a meeting to discuss issues regarding the recently realigned portion of SR 224. Inasmuch as ownership of a part of the realigned road is in dispute, it is important that all parties sit down amicably to explore options and work toward a solution. We ask that you, and whomever you wish to invite, attend. Someone from UDOT will contact you on Wednesday, September 22 to set up a time.

Respectfully,  
  
James H. Beadles  
Assistant Attorney General



State of Utah

OLENE S. WALKER  
GovernorGAYLE McKEACHNIE  
Lieutenant Governor

## Department of Transportation

JOHN R. NJORD, P.E.  
Executive DirectorCARLOS M. BRACERAS, P.E.  
Deputy Director

22 September 2004

Craig Smay  
174 East South Temple  
Salt Lake City, Utah 84111-1102  
FAXED TO 801.539.8544Subject: *Correction of Information*

Dear Mr. Smay:

Unfortunately, a fax that I sent to you and the attorneys for Park City and Mayflower yesterday erroneously stated that the ownership of the realigned portion of SR 224 was "in dispute." As you pointed out to me this morning, however, ownership is not in dispute at all. One particular portion of the realigned road is clearly on Mayflower property. I hope this letter satisfactorily addresses your concern.

Respectfully,

A handwritten signature in black ink, appearing to read "James H. Beadles".

James H. Beadles  
Assistant Attorney General

## **Exhibit “B”**

## Planning Commission Staff Report

**Author:** Brooks T. Robinson  
**Subject:** Village at Empire Pass,  
Master Planned Development  
**Date:** July 14, 2004  
**Type of Item:** Administrative



**PLANNING  
DEPARTMENT**

### **Summary Recommendations:**

Staff is seeking any further discussion and direction on the revised Village Master Plan

### **Topic**

<b>Applicant</b>	<b>United Park City Mines / Talisker Corp.</b>
<b>Location</b>	<b>Village at Empire Pass (formerly known as Flagstaff Mountain Resort)</b>
<b>Zoning</b>	<b>Residential Development (RD) as part of the Flagstaff Master Planned Development (MPD)</b>
<b>Adjacent Land Uses</b>	<b>Deer Valley Resort ski terrain, State Route 224</b>

### **Background**

On June 24, 1999, Council adopted Ordinance 20-99 approving the annexation and development agreement for the 1,655 acre Flagstaff Mountain area. Ordinance 99-30 granted the equivalent of a "large-scale" master planned development (MPD) and set forth the types and locations of land use; maximum densities; timing of development; development approval process; as well as development conditions and amenities for each parcel.

The Development Agreement specifies that only 147 acres of the 1,655 acre annexation may be developed. The remainder of the annexation area is to be retained as passive and recreational open space.

Prior to construction, the applicant must receive site-specific MPD and final plat approval from the City. The Planning Commission takes action on MPD applications and forwards a recommendation to Council on subdivision plats.

Ordinance 99-30 also required that the applicant submit 14 specific technical reports for review and approval by the City. The 14 studies, along with the Land Management Code and the Development Agreement (20-99) form the standards under which the subject MPD and preliminary/final plat will be reviewed.

During the Olympic break a subcommittee consisting of the applicant's design team, staff, and Commissioners Chris Larson, Bruce Erickson, and Michael O'Hara focused

on a review of the preliminary road layout for the mountain village (Pods A, B-1, and B-2) and a building height analysis for the project build-out using the base RD-zone 33 foot height limit. These items were reviewed at a work session and a public hearing on March 27, 2002. No public comment was received. The Commission concluded that

- 1 The base RD-zone height analysis demonstrates that the maximum project densities set forth in Ord 99-30 could potentially be constructed within the approved development pods without the necessity of a height increase above the 33-foot RD zone height limit, and
- 2 Building height increases for specific multi-family/resort-related buildings may be considered based on site-specific reviews and compliance with the standards set forth in the Master Planned Development section of the Land Management Code (LMC)

#### **Proposal**

The applicant seeks Master Planned Development (MPD) approval for the Mountain Village (Pods A, B-1, and B-2), now called the Village at Empire Pass. Pod B-1 was previously approved in May 2002. B-2 is not far enough along in the planning process to have a clear idea of that part of the development. However, residual units and unit equivalents remain for a future B-2 MPD.

The Development Agreement constrains the mixed-use development in the Mountain Village area (Pods A, B-1, and B-2) to

- The Mountain Village is to be contained within 84 acres
- No more than 705 Unit Equivalents (2,000 square feet each) in no more than 470 residential units (including not more than 60 PUD-style units) and no more than 16 single-family home sites
- 65% of the residential units (306) must be within Pod A
- No more than 75,000 square feet of resort support commercial
- A maximum 35,000 square foot day skier lodge in Pod B-2 with no public road access, no day skier parking, and limited parking to meet service and administrative requirements

On May 22, 2002, the Planning Commission approved an MPD and final plats for portions of the Mountain Village including

<b>Lot</b>	<b>Unit Equivalents</b>	<b>Acres</b>
Ten single family homes	Does not count towards 705 total	6.40 acres in Pod B-1
A Empire Day Lodge	None currently. Commercial activities outside of Day Skier use may require use of Commercial UEs	1.33 acres in Pod B-2
B 18 PUD-style homes	27 UEs	16.99 acres in Pod B-1

C: 25 (building 24) Ironwood Townhomes	37.5 UEs	3.63 acres in Pod B-1
D: 22 Unit Stacked Flat "Building H"	34 UEs plus 1UE Support Commercial	1.34 acres in Pod A
Larkspur Townhomes (currently approved is a tri- plex and a duplex)	7.1 UEs or 14,052 sf	Pod A
Paintbrush PUD-style SFD (7 units currently approved)	18.1 UEs or 36,139 sf	Pod A
<b>TOTAL: 77 units (10 SFD homes do not count towards total)</b>	<b>123.7</b>	<b>28.35 acres outside of Pod A</b>

### Analysis

#### Master Planned Development Review

Staff has performed a preliminary review of the proposed Master Planned Development per the Land Management Code Section 15-6-5: Master Planned Developments—MPD Requirements.

#### Length of Approval

Per the LMC, approval of the proposed MPD will be memorialized through a separate development agreement. Construction of the approved MPD will be required to commence within two (2) years of the Development Agreement execution date. After construction commences, the MPD remains valid as long as it is consistent with the approved development agreement and any phasing plan.

#### MPD Modifications

Substantive changes to the MPD require a subsequent Planning Commission review and approval of the MPD and Development Agreement.

#### Site Specific Approvals

Conditional use permit approval including a specific density (square foot) allocation will be required prior to the construction of the PUD-style single-family units and the multi-family units. No conditional use permit is required for the proposed 6 single-family lots. Approval and recordation of the subdivision plat, as well as City Engineer approval of all public improvements is necessary prior to construction of the proposed subdivision.

#### Density

With the current approvals noted above, Pod A and the development parcel of Pod B-2 outside of the Empire Day Lodge is limited to 55.65 acres, 393 residential units and 563.3 Unit Equivalents (assuming Lot B of the Northside Subdivision, Pod B-1, is adjusted)\*. Pod A has 34 units (9 PUDs, 3 townhomes, and 22 condo-lodge units in Building H), already approved of the 306 residential units that are required to be in Pod A. Proposed for Pod A is 321.5 Units, which includes the 34 units, leaving up to 105.5

units available for Pod B-2. In addition, the remaining 6 single-family lots of the 16 allowed in the Village are proposed in Pod A.

*\*The 18 units in lot B were sold under the developer's assumption that the UE is capped at 1.5 no matter what size the building. Staff asserts that some of these units can be a maximum of 5,000 square feet, but not necessarily all of them. What was sold was 90,000 square feet of floor area in 18 units. With the Commission's finding that the Unit Equivalents are counted as one UE per each 2,000 square feet, the 27 UEs approved on lot B may be adjusted to 45 as part of a future amendment to the B-1 MPD. The Density Summary does reflect this adjustment, but the Commission is not making that specific determination at this time. The 28 UEs are not assigned to Pod A or B-2.*

#### Marsac Claim/Mayflower

The Planning Commission received a letter dated June 18, 2004 from E. Craig Smay regarding the holdings of Mayflower and its dispute with United Park. The Commission received a copy of this letter at its meeting of June 23, 2004. Staff generally disagrees with the representations contained in the letter, but for the most part, it is irrelevant. No density is "made available to Mayflower" as a result of this application because Mayflower had no rights under the MPD and DA. The Applicant, however, is entitled to move forward with an application in conformance with the terms of the DA and large scale MPD density that was granted to it. Mayflower, by virtue of a quiet title action after the annexation approval, is only subject to the zoning that was put in place as a result of the annexation. Any development rights for Mayflower property must be determined by separate MPD application. If Mayflower believes its holdings and contracts with United Park give it rights to other units transferred from other property, Mayflower must establish those in court (an action is pending). The City has no ability to quiet title or otherwise determine the legal relationship between Mayflower and United Park. The overall density agreed to by the City as a result of approving the DA was a part of a complex negotiation that included millions of the dollars of obligations, express contributions and dedications, as well as numerous mitigating conditions of approval. An acreage calculation per density as proposed in Mr. Smay's letter would be impossible and simply unfair because such a calculation does not include all the burdens and obligations similarly imposed by the DA. The City feared exactly that and expressly left the necessity of dealing with the other property owners to United Park. If the other owners did not agree to the DA or subsequently negotiated a "late comer's agreement", then such owners may only apply for a separate MPD in accordance to the base zoning as a result of the annexation. So while density is not being assigned to Mayflower, it is true that an application for more than the 2.2 u.e. un-used units would require a rezone application in addition to the MPD. (Like Pod D where the DA expressly addresses this situation and fortunately set a maximum).

The validity of the state road dedication/approval is an issue the City will defer to the state. At the present time, the City has no information from the state undoing its acceptance of dedication. Accordingly, staff recommends proceeding with the application.

#### Pod B-1

The density table allocates 90,000 square feet or 45 Unit Equivalents to Lot C. The previous MPD approval for these 18 PUD-style homes allocated 27 UEs to this lot, with each unit being up to 5,000 square feet. The footprints and sections that were reviewed by the Planning Commission were concepts of 5,000 square foot units. An amendment to the MPD will be required to adjust this number, however the density table recognizes that up to 90,000 square feet may be assigned to Lot C.

#### Pod B-2

The developer is unsure what this last development piece may look like. Several alternatives were presented in the Planning Commission binder. An MPD will be required when a UPK has a better idea of how this pod will develop.

#### Setbacks

The LMC requires a minimum 25-foot setback around the exterior boundary of a master planned development. The proposed Village MPD complies with this standard. Within the Village, the Planning Commission may reduce the RD zone setbacks. Exhibit 10 (Setback Exhibit) shows potential areas for setback reductions based on the conceptual site plans. Specific setbacks will be considered during the Conditional Use Permit process.

#### Open Space

The Development Agreement limits the overall development to 147 acres out of the 1,655-acre project area. The 88% open space provision exceeds the normal 60% open space requirement set forth in the LMC. Within each of the pods, Conservation Easements will be placed on several lots to restrict development on platted lots. Staff finds that this restriction is consistent with the development acreage restriction and will not count the Conservation Easement areas as part of the development acreage.

#### Off-Street Parking

The Parking and Transit Management Plans (adopted by the Planning Commission on October 24, 2001) establish specific parking requirements for the project area that include a 25% parking reduction from the normal LMC requirements for multi-family and commercial units. Parking for all single-family and PUD-style single-family units will meet or exceed the two-space/unit requirement. Specific parking requirements for the multi-family units and any commercial area will be subject to more specific analysis during the subsequent conditional use permit review process.

#### Building Height

The single-family (both PUD and non-PUD) and townhouse units will be constructed pursuant to the 33' RD-zone height limitation. Height exceptions are being requested for the nine stacked-flat condo-lodges including the Empire (Alpine) Club. The



applicant's request and discussion of the four required findings for additional height are discussed in the Volumetrics Analysis section of the application binder.

The LMC grants the Planning Commission the authority to allow additional building height based upon site-specific analysis provided the Commission can make the following four findings. The findings are listed below. Staff comments are in *italics*.

**1. The increase in building height does not result in an increase in square footage or building volume over what could be allowed under the zone-required building height and density, including requirements for facade variation and design, but rather provides desired architectural variation.**

*Complies. In January 2002, a Planning Commission subcommittee and staff met with the applicant over the course of several meetings to review a base zone height analysis of the Flagstaff Mountain Resort (now Empire Pass) project. The analysis was conducted to determine whether or not the density authorized in Development Agreement and Large-Scale MPD could be designed to meet the RD District 33-foot building height limits. Based on this analysis, it was determined that the Mountain Village area (Pods A, B-1, and B-2) could be designed utilizing 2-3 story, relatively-flat roof structures (4:12 roofs) and meet all necessary LMC height, setback, and facade shift requirements without the necessity of height exceptions. The result of such a design approach to the Mountain Village would be significantly greater site disturbance and loss of significant areas of vegetation. At the March 27, 2002 meeting, the Planning Commission reviewed the analysis and concluded that additional building height could be considered for multi-unit dwellings provided that proposal was consistent with the LMC.*

*Consistent with the base zone height analysis previously reviewed by Staff and the Planning Commission, the proposed buildings 1-9 volumetrics result in a unit count and overall square footage consistent with the density assigned to the Mountain Village area pursuant to the Development Agreement and Large-Scale MPD approval. Therefore, there is no increase in density or square footage as a result of the height increase. The additional height is also offset by increased setbacks which offers opportunities for greater landscape buffers to be established. The proposed roof design, including pitched roofs that step with grade, are consistent with LMC Architectural Design Guidelines, suggestive of pitched/sloping roofs found on historic mine structures originally located in the area, provide increased vertical breaks in the building mass, and increased architectural interest beyond that provided by a relatively flat roof building.*

**2. Buildings have been positioned to minimize visual impacts on adjacent structures. Potential problems on neighboring properties caused by shadows, loss of solar access, and loss of air circulation, have been mitigated to the extent possible as defined by the Planning Commission.**

**Complies.** No structures currently exist on the neighboring properties. Townhouses and Single Family/PUD-style units are proposed to the south, east and west of the nine building core. The conceptual site plan is designed to orient the multi-family units to the central ski run and to mountain views to the west and east.

- 3. There is adequate landscaping and buffering from adjacent properties and uses. Increased setbacks and separations from adjacent projects are being proposed.**

**Complies.** The proposed building exceeds the RD District setback requirements. The setback requirements of the RD District are 20 feet for front yards, 15 feet for rear yards, and 12 feet for side yards. The proposed setbacks are 25-55 feet for the front yard setback, 15-25 feet for the rear setback, and 15-30 feet for the side yard setback. Staff finds that sufficient building separation between each structure is provided. A specific landscaping/buffer plan will be required as part of the conditional use permit review for each of the nine buildings.

- 4. The additional building height has resulted in more than minimum open space required and has resulted in the open space being more usable.**

**Complies.** The Mountain Village design clusters the majority of the Empire Pass density into Pods A, B-1, and B-2 in exchange for larger areas of project open space. The LMC requirement for MPD open space is 60%. Approximately 88% open space is provided pursuant to the Development Agreement. The bulk of the project open space is utilized for passive recreation areas, trails, ski terrain and improvements, wildlife areas, and sensitive terrain preservation.

*In addition to the criteria outlined above, the Planning Commission subcommittee identified several vantage points during the Olympic break that are to be used during MPD and subsequent PUD reviews. The vantage points include views from King Road, two points from Stein Eriksen Lodge, the Marsac Building, Guardsman Road/Guardsman Road Connection intersection, the Daly West head frame, and American Flag Subdivision. A visual analysis of the Village from these vantage points has been included with this report as an attachment. As demonstrated by the visual analysis, the nine buildings are partially visible from the subcommittee's vantage points, but are mitigated by the current and potential tree canopy and the backdrop of the mountains behind. The buildings do not break any significant ridgelines.*

#### Site Planning

The nine site planning criteria outlined in the LMC are intended to promote overall design that incorporates the development into the site's natural characteristics. Generally, the location of the proposed development parcels is consistent with the development pods approved as part of Development Agreement and Large-Scale MPD which clustered the development onto less-steep terrain and in the least visually sensitive areas. The open space areas designated in the Development Agreement are respected with this plan.

#### Roads

The roadway system has been reviewed by staff and is much preferable to the previous configuration. Three roads plus a frontage road on the north end townhouses serve Pod A. The previous configuration had dead-end cul de sacs serving the interior larger buildings. The present configuration allows for greater tree buffer along Marsac Avenue and reduced grading. However, a cul de sac in excess of 650 feet is created in the southwest quadrant. This is in conflict with the general policy and subdivision code of the City to limit the length of dead-end roads. The Chief Fire Marshall is comfortable with the plan as it relates to fire access and safety as the end of the cul de sac continues as an emergency access point as part of the Emergency Response Plan. The Commission reviewed this issue at the work session of April 14, 2004 and was accepting of the Fire Marshall's recommendation. Approval of the proposed cul de sac will require a specific finding of the Planning Commission.

#### Trails

Existing and new trails are accommodated with the proposed plan. All "back-country" work is to be coordinated with the Mountain Trails Foundation. The proposed trail work is consistent with the Trails Master Plan adopted by the Planning Commission on October 24, 2001.

Overall pedestrian circulation is outlined in the applicant's packet. The internal pedestrian paths are intended to keep users off the roads as much as possible and to link the Empire Club with the outlying areas. There may be instances, particularly at the north and south ends, where sidewalks along the streets would be required in order to meet the subdivision regulations. The Planning Commission discussed this issue on

April 14, 2004 and agreed to waive this requirement. Snow storage, landscaping, recycling, delivery access, and ADA access for multi-family units will also be analyzed during the subsequent conditional use permit process.

#### Landscape and Streetscape

Landscaping, streetscape, and lighting will be reviewed for the multi-family and PUD-style single-family lots during the subsequent conditional use permit process. The applicant will need to clarify the amount and type of street lighting proposed along the residential streets. The lighting must comply with the City Engineer's specifications, the Municipal Lighting Code, and the Design Guidelines adopted by the Planning Commission on October 24, 2001. All street lights will be privately maintained.

#### Sensitive Lands Compliance

The Sensitive Lands (overlay) Zone did not specifically apply to the Empire Pass Large-Scale MPD and annexation; however, the locations of the development pods are based on Sensitive Lands principles.

#### Employee/Affordable Housing

Pursuant to the Flagstaff Mountain Resort Employee/Affordable Housing Plan, 15 employee/affordable housing units are required to be constructed or in-lieu fees paid with the Certificate of Occupancy of 150 Unit Equivalents. Review of the employee housing units and specific conditions of approval will take place during the conditional use permit review process.

**Recommendation:** The Planning Department recommends the Planning Commission re-open the public hearing and take public comment. Staff has prepared Findings of Fact, Conclusions of Law and Conditions of Approval as follows:

#### Findings of Fact

1. The Flagstaff Mountain Resort Phase II Master Planned Development is located in the RD-MPD and ROS-MPD Districts.
2. The City Council approved the Development Agreement for Flagstaff Mountain Development Agreement/Annexation Resolution No. 99-30 on June 24, 1999. The Development Agreement is the equivalent of a Large-Scale Master Plan. The Development Agreement sets forth maximum project densities, location of densities, and developer-offered amenities.
3. The Flagstaff Mountain Annexation is approximately 1,655 acres. Mixed-used development is limited to approximately 147 acres in four (4) development areas identified as Pods A, B-1, B-2, and D. The remainder of the annexation area is to be retained as passive and/or recreational open space.
4. The Development Agreement limits development in Pods A, B-1, B-2 to:

\* No more than 705 Unit Equivalents in no more than 470 residential units (including not more than 60 PUD-style units) and no more than 16 single-family home sites.

\* no more than 75,000 square feet of resort support commercial; and

\* a maximum 35,000 square foot day skier lodge in Pod B-2.

5. The Development Agreement required City review and approval of fourteen (14) technical reports/studies. The reports include details on the following information:

Mine/Soil Hazard Mitigation  
Architectural Design Guidelines  
Transit  
Parking  
Open Space Management  
Historic Preservation  
Emergency Response  
Trails  
Private Road Access Limitations  
Construction Phasing  
Infrastructure and Public Improvement Design  
Utilities  
Wildlife Management  
Affordable Housing

6. The Planning Commission completed the review and approval process for the technical reports/studies on December 12, 2001.

7. The Construction and Phasing Development Plan, approved by the Planning Commission on December 12, 2001 specifies that:

No vertical construction shall begin in Pod D until the following items are completed:

-approval of the Mountain Village Master Planned Development (MPD) application (including, but not limited to, the Alpine Club Phase 1, pulse gondola, transit hub, village ski runs, and related landscaping) and all related conditional use permits;

- approval of the Pod D MPD and subdivision plat;

-substantially complete, and bond for completion by December 25, 2004, the operation of the Alpine Club Phase 1 resort amenity package (including, at a minimum, a restaurant, bar, convenience store, landscaping, ski runs/pedestrian

connections, and concierge's services operated by a management company. Phase 1 of the Alpine Club will consist of a minimum of 10,000 square feet of building area ;

-substantially complete, and bond for completion by December 25, 2004, the first phase of Alpine Club multi-family units as approved in the Mountain Village MPD;

-issuance of the building permit, and bond for completion by December 25, 2004, for the Mountain Village transit hub;

-issuance of the building permit, and bond for completion by December 25, 2004, for the pulse gondola; and

-issuance of a building permit for at least one multi-family building within the Mountain Village(as approved in the Mountain Village MPD) in addition to the Alpine Club multi-family units.

8. The 14 technical reports/studies, along with the Land Management Code and the Development Agreement (30-99) form the standards which the subject Master Planned Development and Phase 1 preliminary/final plat are reviewed.

9. The applicant has provided supplemental materials titled, " The Northside Village Subdivision II MPD Supplemental Project Description and Conditions" dated September 4, 2002 which detail proposed densities concept site designs, site cross sections, building volumetrics, and preliminary landscape designs for Phase II MPD area.

10. The Northside Village Subdivision II MPD Supplemental Project Description and Conditions dated September 4, 2002 illustrates conceptual access and street layouts which have not been specifically approved by the City Engineer and City Fire Marshall.

11. Conditional Use Permit approval is required prior to any development within the Flagstaff Mountain Resort Northside Village Subdivision II MPD area.

13. The proposed Flagstaff Mountain Resort Phase II Master Planned Development includes a maximum density assignment and conceptual site design for Eighteen (18) detached single family units utilizing nor more than 27 Unit Equivalents on Northside Village Subdivision II, Lot B.

14. The Maximum Building Footprint for the eighteen (18) detached single family units on Northside Village Subdivision II, Lot B is 3000 square feet.

15. The Maximum Floor Area for the eighteen (18) detached single family units on Northside Village Subdivision II, Lot B is 5000 square feet. An additional 600 square feet is proposed for a garage.

16. Sheet 5 of the Northside Village Subdivision II MPD Supplemental Project Description and Conditions dated September 4, 2002 illustrates the conceptual clustered site design/building locations for the eighteen (18) detached single family units on Northside Village Subdivision II, Lot B approved by the Planning Commission on September 11, 2002.

17. The applicant has agreed to limit disturbance around any building footprint on Northside Village Subdivision II, Lot B to no more than 15 feet beyond the building footprint. A maximum Limits of Disturbance line is identified on Sheet 7 of the Northside Village Subdivision II MPD Supplemental Project Description and Conditions dated September 4, 2002.

18. The eighteen (18) detached single family units on Northside Village Subdivision II, Lot B are to be platted as condominiums and not as PUD units.

19. The applicant has agreed to route utility lines and ski trails in existing clearings and common utility corridors to the greatest extent practical upon the City Engineer's approval.

20. The proposed Flagstaff Mountain Resort Phase II Master Planned Development includes a maximum density assignment and conceptual site design for twenty-five (25) townhouse units utilizing not more than 37.5 Unit Equivalents on Northside Village Subdivision II, Lot C.

21. The proposed Flagstaff Mountain Resort Phase II Master Planned Development includes a maximum density assignment and conceptual site design for twenty-two (22) condominium units in one building, utilizing not more than 34 Unit Equivalents on Northside Village Subdivision II, Lot D.

22. The maximum Building Height in the RD District is 28 feet (33 feet with a pitched roof).

23. The Land Management Code, Section 15-6-5(E) allows the Planning Commission to consider increased building height based upon a site specific analysis and determination.

24. The applicant has requested additional building height for the structure proposed on the Northside Village Subdivision II, Lot D. The proposed building volumetrics are detailed on Sheets 12-17 of the Northside Village Subdivision II MPD Supplemental Project Description and Conditions dated September 4, 2002. The maximum building elevation is identified as USGS datum point 8211.

25. The proposed increase in building height for Building H on the Northside Village Subdivision II, Lot D does not result in an increase in square footage or building volume over what could be allowed under the zone-required building height and density.

including requirements for facade variation and design, but rather provides desired architectural variation.

26. Proposed Building H on Northside Village Subdivision II, Lot D has been positioned to minimize visual impacts on adjacent structures. Potential problems on neighboring properties caused by shadows, loss of solar access, and loss of air circulation, have been mitigated to the extent possible as defined by the Planning Commission.

27. The site plan for proposed Building H on Northside Village Subdivision II, Lot D includes adequate landscaping and buffering from adjacent properties and uses.

28. The additional building height for proposed Building H on Northside Village Subdivision II, Lot D has resulted in more minimum open space than required and has resulted in the open space being more usable.

29. Public hearings were held on the proposed Master Planned Development on June 12, 2002, July 10, 2002, July 31, 2002, August 31, 2002, and September 11, 2002.

#### **Conclusions of Law**

1. The MPD, as conditioned, complies with all the requirements of the Land Management Code;
2. The MPD, as conditioned, meets the minimum requirements of Section 15-6-5 of this Code;
3. The MPD, as conditioned, is consistent with the Park City General Plan;
4. The MPD, as conditioned, provides the highest value of open space, as determined by the Planning Commission;
5. The MPD, as conditioned, strengthens and enhances the resort character of Park City;
6. The MPD, as conditioned, compliments the natural features on the Site and preserves significant features or vegetation to the extent possible;
7. The MPD, as conditioned, is Compatible in use, scale and mass with adjacent Properties, and promotes neighborhood Compatibility;
8. The MPD provides amenities to the community so that there is no net loss of community amenities;
9. The MPD, as conditioned is consistent with the employee Affordable Housing requirements as adopted by the City Council at the time the Application was filed.



10. The MPD, as conditioned, meets the provisions of the Sensitive Lands provisions of the Land Management Code. The project has been designed to place Development on the most Developable Land and least visually obtrusive portions of the Site:

11. The MPD, as conditioned promotes the Use of non-vehicular forms of transportation through design and by providing trail connections; and,

12. The MPD has been noticed and public hearings held in accordance with this Code.

13. The requirements necessary for the Planning Commission to grant additional building height within the MPD pursuant to the Land Management Code Section 15-6-5 have been met.

#### **Conditions of Approval**

1. All standard conditions of approval (attached) apply to this Master Planned Development.

2. A Conditional Use Permit is required prior to any development within the Flagstaff Mountain Resort Northside Village Subdivision II MPD area.

3. No vertical construction shall begin in Pod D until the following items are completed:

- approval of the Mountain Village Master Planned Development (MPD) application (including, but not limited to, the Alpine Club Phase 1, pulse gondola, transit hub, village ski runs, and related landscaping) and all related conditional use permits;

- approval of the Pod D MPD and subdivision plat;

- substantially complete, and bond for completion by December 25, 2004, the operation of the Alpine Club Phase 1 resort amenity package (including, at a minimum, a restaurant, bar, convenience store, landscaping, ski runs/pedestrian connections, and concierge's services operated by a management company. Phase 1 of the Alpine Club will consist of a minimum of 10,000 square feet of building area ;

- substantially complete, and bond for completion by December 25, 2004, the first phase of Alpine Club multi-family units as approved in the Mountain Village MPD;

- issuance of the building permit, and bond for completion by December 25, 2004, for the Mountain Village transit hub;

- issuance of the building permit, and bond for completion by December 25, 2004, for the pulse gondola; and

-issuance of a building permit for at least one multi-family building within the Mountain Village(as approved in the Mountain Village MPD) in addition to the Alpine Club multi-family units.

4. City Engineer approval of a utility and infrastructure plan is a condition precedent to the issuance of any building permits within the Flagstaff Mountain Resort Phase II Master Planned Development area.
5. Utility lines and ski trails shall be routed in existing clearings and common utility corridors to the greatest extent practical upon the City Engineer's approval.
6. A maintenance agreement for the roads within the project that are to be dedicated to the City and/or State, consistent with the requirements of the Development Agreement, and in a form acceptable to the City Attorney and City Engineer is a condition precedent to plat recordation. If and when the realigned Guardsman road is dedicated to the City, the Developer will execute an encroachment agreement, in a form acceptable to the City Attorney and City Engineer for the private improvements (ski bridge and tunnel) within the rights-of-way.
7. All essential municipal public utility buildings associated with the utility plan for the subdivision require a conditional use permit.

## **Exhibit “C”**

## Planning Commission Staff Report



**Author:** Brooks T. Robinson  
**Subject:** Red Cloud (Pod D)  
Final Plat of Subdivision  
**Date:** October 27, 2004  
**Type of Item:** Administrative

**PLANNING  
DEPARTMENT**

### **Summary Recommendations:**

The Planning Staff requests that the Planning Commission open the public hearing on the Final Plat of the Red Cloud Subdivision, take any input and discuss as necessary. The staff has provided Findings of Fact, Conclusions of Law and Conditions of Approval for a positive recommendation to the City Council.

### **Topic**

<b>Applicant</b>	<b>United Park City Mines / Talisker Corp.</b>
<b>Location</b>	<b>Empire Pass (formerly known as Flagstaff Mountain Resort), top of Northside ski lift</b>
<b>Zoning</b>	<b>Estate (E) as part of the Flagstaff Master Planned Development (MPD)</b>
<b>Adjacent Land Uses</b>	<b>Deer Valley Resort ski terrain</b>

### **Background**

On June 24, 1999, Council adopted Ordinance 99-30 approving the annexation and development agreement for the 1,655 acre Flagstaff Mountain area. Ordinance 99-30 granted the equivalent of a "large-scale" master planned development (MPD) and set forth the types and locations of land use; maximum densities; timing of development; development approval process; as well as development conditions and amenities for each parcel.

The Development Agreement (DA) specifies that only 147 acres of the 1,655-acre annexation may be developed. The remainder of the annexation area is to be retained as passive and recreational open space.

Prior to construction, the applicant must receive site-specific MPD and final plat approval from the City. The Planning Commission takes action on MPD applications and forwards a recommendation to Council on subdivision plats. The Planning Commission approved a Preliminary plat for Red Cloud on September 22, 2004.

Ordinance 99-30 also required that the applicant submit 14 specific technical reports for review and approval by the City. The 14 studies, along with the Land Management Code and the Development Agreement (99-30) form the standards under which the subject MPD and preliminary/final plat will be reviewed.

On August 11, 2004 the Planning Commission approved a Master Planned Development for 30 single-family lots known as Red Cloud. This approval was appealed to the City Council. The Council heard the appeal on September 9, 2004 and upheld the Planning Commission's approval of the MPD. The approved MPD includes a revision to the Pod D boundary as illustrated in Exhibit A of the Development Agreement. The City Council amended the Development Agreement and Zoning Map on September 23, 2004.

### **Analysis**

The proposed final plat is in substantial compliance with the Master Planned Development design requirements set forth in the DA and the approved preliminary plat.

Thirty lots are proposed. The lot layout is consistent with the approved MPD. Lot sizes range from in size from 1.04 acres to 2.45 acres which meets exceeds the minimum RD District lot size requirements. The building pads are located outside of the meadow areas and within locations that minimize significant tree removal. Building sites comply with the 50-foot setback from adjacent ski runs. The plat identifies the Enchanted Forest Public Ski and Conservation Easement areas in a manner consistent with the approved MPD. City approval of the Enchanted Forest Public Ski and Conservation easement language as a condition precedent to final plat recordation.

Access will be provided via a 50 foot wide private road. Preliminary road plans indicate that the alignment is designed to minimize cut/fill slopes and maximize vegetation buffer areas.

Vehicular and utility access to abutting developable parcels of land is provided in two locations. These locations are adjacent to the most easily developable (flattest) sites on neighboring property.

The building pad locations respect the Ridgeline section of the Sensitive Lands criteria in keeping 150 feet away from the ridge.

The 20-foot-wide all-weather surface emergency access road located between lots 21 and 22. The emergency access road is grading intensive and connects Red Cloud back down to Marsac Avenue. The alignment may severely impact the Deer Valley ski terrain. This emergency access road must be installed prior to building permit issuance for any of the single-family homes. The road is required by the approved Emergency Response technical report.

The Planning Commission approved and adopted 14 Technical Reports in December 2001. Exhibit 10 is the Construction and Development Phasing Plan. With reference to Pod D (Red Cloud) the following requirements must be met:

"No vertical construction shall begin in Pod D until the following items are completed:

- Approval of the Mountain Village Master Planned Development (MPD) application (including, but not limited to, the Alpine Club Phase 1, pulse gondola, transit hub, village ski runs, and related landscaping) and all related conditional use permits;
- Approval of the Pod D MPD and subdivision plat;
- The Alpine Club Phase 1 resort amenity package shall be substantially complete and bonded for completion by December 25, 2004, including, at a minimum, a restaurant, bar, convenience store, landscaping, ski runs/pedestrian connections, and concierge's services operated by a management company. Phase 1 of the Alpine Club will consist of a minimum of 10,000 square feet of building area;
- The first phase of Alpine Club multi-family units as approved in the Mountain Village MPD shall be substantially complete, and bonded for completion by December 25, 2004;
- A building permit shall be issued for the Mountain Village transit hub and the hub shall be bonded for completion by December 25, 2004;
- A building permit shall be issued for the pulse gondola and the gondola shall be bonded for completion by December 25, 2004; and
- A building permit shall be issued for construction of at least one multi-family building within the Mountain Village (as approved in the Mountain Village MPD) in addition to the Alpine Club multi-family units."

Although the Phasing Plan identifies a date (December 25, 2004) that certain amenities must be substantially completed and bonded for completion, Staff recognizes that the ownership change in UPCM set that timing back substantially. It is Staff's position that these amenities must be in place prior to vertical construction in Red Cloud.

#### Plat Notes

In addition to the submitted plat notes, the following Development Standards and Review Process language is recommended:

"The City as a condition to the final subdivision approval imposes the following standards and review criteria. These criteria are in addition to the conditions imposed on the project by the project's CC&Rs, Design Guidelines and other conditions imposed by the Empire Pass Design Review Board\*. All references to defined terms in the Land Management Code (LMC) are references to the LMC in effect at the time of this plat approval. All references to defined terms in the

---

\* AKA the "Design Review Committee" in the Design Guidelines, exhibit 2 of the 1999 LSMPD for the Project.

Design Guidelines (DGs) and Emergency Response Plan (ERP) are references to exhibits to the projects 1999 Large Scale Master Plan (LSMPD) and are subject to any future revision of those documents.

#### Gross Floor Area

The maximum Gross Floor Area (LMC) of a house is 10,000 sq ft. Gross Floor Area includes all enclosed areas designed for human occupation. Unenclosed porches, balconies, patios and decks, vent shafts, courts are not calculated in Gross Floor Area. Garages, up to a maximum area of 600 square feet, are not considered Gross Floor Area. Basement Area (LMC) below Final Grade (LMC) is not considered Gross Floor Area. The square footage of all Accessory Structures (LMC) is deducted from the house Gross Floor Area. Garage square footage in excess of 600 square feet is deducted from the house Gross Floor Area.

#### Approximate Building Location

Approximate Building Locations within each lot are shown on the plat are subject to adjustment on an individual lot basis with the approval of the Design Review Board. Such approvals must be obtained prior to the issuance of a building permit. Site-specific plans must be developed within these locations and submitted to the Design Review Board, whose approval must be received before the issuance of a building permit. Any such Design Review Board approval is subject to review and approval by the Planning Department in accordance with the provisions of the LMC and applicable Design Guidelines. Approximate Building Locations have been sited on Developable Land (LMC), and avoid Ridge Line Areas (LMC). Therefore, any adjustment of the Approximate Building Location must avoid Very Steep Slopes (LMC) and Ridge Line Areas.

#### Building Footprint and Site Disturbance

In order to encourage lower building forms, the maximum building footprint is allowed up to the total area shown within the Approximate Building Location (Design Guidelines) as shown on the plat. Second story square footage cannot be more than 2/3rds of the first floor.

Total Limits of Disturbance cannot extend more than 20' beyond the outside walls of the building. Driveways, utility corridors, paths, drainage features, ski trails and their associated retaining structures are exceptions to this restriction. Limits of Disturbance (LMC) plans shall be submitted to the City Planning Department for review and approval by individual homeowners. These plans must demonstrate compliance with the goal of maximum retention of Significant Vegetation (LMC) and minimization of overall site disturbance.

**Defensible Space**

Vegetation outside of the Limits of Disturbance will be managed in accordance with the Defensible Space Plan consistent with the Urban Wildland Fire Interface Code and will focus on fire hazard reduction as well as good forest health and may not be improved for additional yard area. Removal of vegetation beyond the Limits of Disturbance will be done only by hand held equipment. All vegetation removal and management must be approved by both the Planning and Building Departments whose requirements may include that a licensed professional prepare the plan.

**Irrigated Area**

Each individual lot must submit landscape plans consistent with the projects Design Guidelines and a Defensible Space Plan (ERP). The maximum irrigated area within the landscaped area that will be considered for any lot is 5,000 sq ft. This does not limit the City's ability to require additional intermittent irrigation of existing vegetation in the Defensible Space zone adjacent to the landscaped area."

**Department Review**

This project has gone through an interdepartmental review. No additional issues have been raised.

**Notice**

The property was posted and notice was mailed to property owners within 300 feet. Legal notice was also put in the Park Record. No specific input has been received by the time of this report, although an adjacent property owner, Mayflower Stichting, previously appealed the MPD.

**Alternatives**

- The Planning Commission may forward a positive recommendation to the City Council on the final plat with the conditions stated, or modify the conditions, or
- The Planning Commission may forward a negative recommendation to the City Council on the final plat and direct staff to prepare findings supporting this recommendation, or
- The Planning Commission may continue the discussion to a later date.

**Recommendation**

The Planning Staff requests that the Planning Commission open the public hearing on the Final Plat of the Red Cloud Subdivision, take any input and discuss as necessary. The staff has provided Findings of Fact, Conclusions of Law and Conditions of Approval for a positive recommendation to the City Council.



### Findings of Fact

1. The Red Cloud Preliminary Plat is located in the Estate-MPD and Recreational Open Space-MPD Districts.
2. The City Council approved the Development Agreement for Flagstaff Mountain Development Agreement/Annexation Resolution No. 99-30 on June 24, 1999. The Development Agreement is the equivalent of a Large-Scale Master Plan. The Development Agreement sets forth maximum project densities, location of densities, and developer-offered amenities.
3. The Flagstaff Mountain Annexation is approximately 1,655 acres. Mixed-used development is limited to approximately 147 acres in four (4) development areas identified as Pods A, B-1, B-2, and D. The remainder of the annexation area is to be retained as passive and/or recreational open space.
4. The MPD and subdivision are subject to the 14 Technical Reports approved on December 12, 2002.
5. The Planning Commission approved the Red Cloud MPD on August 11, 2004, for thirty (30) single-family homes.
6. On September 9, 2004, the City Council upheld the Planning Commission's approval of the MPD after hearing an appeal by Stichting Mayflower Fonds, et al.
7. Both a Conservation Easement and Public Ski Easement are proposed within platted lots for the Enchanted Forest. Conservation easements are proposed elsewhere in Empire Pass in accordance with the Development Agreement.
8. Utility lines and ski trails will be routed in existing clearings and common utility corridors to the greatest extent practical upon the City Engineer's approval.
9. The Emergency Response Plan has been reviewed by the Chief Fire Marshall and the Planning Commission in order to allow fire access and safety at the end of the over length cul de sac. A secondary emergency access road is required with an all-weather 20-foot wide surface.
10. The maximum Building Height in the Estate District is 28 feet (33 feet with a pitched roof).
11. The Planning Commission approval of the Red Cloud MPD included a recommendation to Council to amend the Development Agreement, Exhibit A, Pod D Boundary.
12. The applicant's prior dedication of the realigned SR 224 is subject to a claim resulting from ownership of the Marsac Claim. The applicant and UDOT have committed to maintaining public access and taking necessary corrective action. Accordingly, the applicant is proceeding at their own risk.

### Conclusions of Law

1. There is good cause for this Final Subdivision Plat.
2. The Final Subdivision Plat is consistent with the Flagstaff Annexation and Development Agreement, the Red Cloud Master Plan Development, the Red Cloud

Preliminary Plat, Park City Land Management Code, the General Plan and applicable State law regarding Subdivision Plats.

3. Neither the public nor any person will be materially injured by the proposed Preliminary Subdivision Plat.
4. Approval of the Final Subdivision Plat, subject to the conditions stated below, does not adversely affect the health, safety and welfare of the citizens of Park City.

#### Conditions of Approval

1. City Engineer approval of a utility and infrastructure plan is a condition precedent to the plat recordation.
2. Both utility lines and ski trails shall be routed in existing clearings and common utility corridors to the greatest extent practical upon the City Engineer's approval. Utility lines and cleared ski trails shall not encroach in the Enchanted Forest as defined on the plat.
3. The proposed over-length cul de sac that ends in the thirty single family lots will have a secondary emergency access from the Red Cloud road. This emergency access shall not go through the Enchanted Forest. The emergency access will continue as a minimum 20-foot wide all-weather surface road. This emergency access road must be installed prior to building permit issuance for any of the single-family homes.
4. A Construction Mitigation Plan, including truck routing, is a submittal requirement for each Building Permit and for the Red Cloud Subdivision infrastructure.
5. The final subdivision plat will include plat notes on development standards and review process as follows:

The City as a condition to the final subdivision approval imposes the following standards and review criteria. These criteria are in addition to the conditions imposed on the project by the project's CC&Rs, Design Guidelines and other conditions imposed by the Empire Pass Design Review Board<sup>b</sup>. All references to defined terms in the Land Management Code (LMC) are references to the LMC in effect at the time of this plat approval. All references to defined terms in the Design Guidelines (DGs) and Emergency Response Plan (ERP) are references to exhibits to the projects 1999 Large Scale Master Plan (LSMPD) and are subject to any future revision of those documents.

#### Gross Floor Area

The maximum Gross Floor Area (LMC) of a house is 10,000 sq ft. Gross Floor Area includes all enclosed areas designed for human occupation. Unenclosed porches, balconies, patios and decks, vent shafts, courts are not calculated in Gross Floor Area. Garages, up to a maximum area of 600 square feet, are not considered Gross Floor Area. Basement Area (LMC) below Final Grade (LMC) is

---

<sup>b</sup> AKA the "Design Review Committee" in the Design Guidelines, exhibit 2 of the 1999 LSMPD for the Project.

not considered Gross Floor Area. The square footage of all Accessory Structures (LMC) is deducted from the house Gross Floor Area. Garage square footage in excess of 600 square feet is deducted from the house Gross Floor Area.

#### Approximate Building Location

Approximate Building Locations within each lot are shown on the plat are subject to adjustment on an individual lot basis with the approval of the Design Review Board. Such approvals must be obtained prior to the issuance of a building permit. Site-specific plans must be developed within these locations and submitted to the Design Review Board, whose approval must be received before the issuance of a building permit. Any such Design Review Board approval is subject to review and approval by the Planning Department in accordance with the provisions of the LMC and applicable Design Guidelines. Approximate Building Locations have been sited on Developable Land (LMC), and avoid Ridge Line Areas (LMC). Therefore, any adjustment of the Approximate Building Location must avoid Very Steep Slopes (LMC) and Ridge Line Areas.

#### Building Footprint and Site Disturbance

In order to encourage lower building forms, the maximum building footprint is allowed up to the total area shown within the Approximate Building Location (Design Guidelines) as shown on the plat. Second story square footage cannot be more than 2/3rds of the first floor.

Total Limits of Disturbance cannot extend more than 20' beyond the outside walls of the building. Driveways, utility corridors, paths, drainage features, ski trails and their associated retaining structures are exceptions to this restriction. Limits of Disturbance (LMC) plans shall be submitted to the City Planning Department for review and approval by individual homeowners. These plans must demonstrate compliance with the goal of maximum retention of Significant Vegetation (LMC) and minimization of overall site disturbance.

#### Defensible Space

Vegetation outside of the Limits of Disturbance will be managed in accordance with the Defensible Space Plan consistent with the Urban Wildland Fire Interface Code and will focus on fire hazard reduction as well as good forest health and may not be improved for additional yard area. Removal of vegetation beyond the Limits of Disturbance will be done only by hand held equipment. All vegetation removal and management must be approved by both the Planning and Building Departments whose requirements may include that a licensed professional prepare the plan.

#### Irrigated Area

Each individual lot must submit landscape plans consistent with the projects Design

Guidelines and a Defensible Space Plan (Emergency Response Plan). The maximum irrigated area within the landscaped area that will be considered for any lot is 5,000 sq ft. This does not limit the City's ability to require additional intermittent irrigation of existing vegetation in the Defensible Space zone adjacent to the landscaped area.

6. The final subdivision plat will include ski and conservation easements over the Enchanted Forest. Public ski access only will be allowed. No construction activity, including fencing, is permitted within the Enchanted Forest as defined on the final plat.
7. All subsequent applications and approvals are subject to the Technical Reports as approved or amended.
8. Vertical construction in Red Cloud, (except building permits for Temporary Improvements, including sales and construction trailers) is allowed only in accordance with the Planning Commission approved Construction and Development Phasing plan, or as amended by subsequent action. Vertical construction is constrained by:
  - Approval of the Mountain Village Master Planned Development (MPD) application (including, but not limited to, the Alpine Club Phase 1, pulse gondola, transit hub, village ski runs, and related landscaping) and all related conditional use permits;
  - Approval of the Pod D MPD and subdivision plat;
  - The Alpine Club Phase 1 resort amenity package shall be substantially complete and bonded for completion ~~by December 25, 2004~~, including, at a minimum, a restaurant, bar, convenience store, landscaping, ski runs/pedestrian connections, and concierge's services operated by a management company. Phase 1 of the Alpine Club will consist of a minimum of 10,000 square feet of building area;
  - The first phase of Alpine Club multi-family units as approved in the Mountain Village MPD shall be substantially complete, and bonded for completion ~~by December 25, 2004~~;
  - A building permit shall be issued for the Mountain Village transit hub and the hub shall be bonded for completion ~~by December 25, 2004~~;
  - A building permit shall be issued for the pulse gondola and the gondola shall be bonded for completion ~~by December 25, 2004~~; and
  - A building permit shall be issued for construction of at least one multi-family building within the Mountain Village (as approved in the Mountain Village MPD) in addition to the Alpine Club multi-family units.
9. A financial security to guarantee the installation of public improvements is required prior to plat recordation in a form approved by the City Attorney and in an amount approved by the City Engineer.
10. If at any time, public access or the State's acceptance of dedication of SR 224 is invalidated or withdrawn, all development activity shall be subject to immediate stop

work order and any Certificate of Occupancy and Building Permit shall be void. This Condition shall be noted on the plat.

**Exhibits**

**A- Final Plat**

M:\Brooks\Planning Comm\PC2004\Flagstaff Red Cloud Final Plat 102704.doc